

INFORMAL ADVISORY OPINION NO. 2001-9

A member of the public filed a formal charge against a state legislator with the Hawaii State Ethics Commission ("Commission"). The complainant had previously complained to the legislator's office about the legislator's use of legislative resources for "Legislative Fellowship Meetings" ("LFM's"). LFM's are essentially meetings, limited to legislators, at which a number of legislators gather to discuss the Bible or other inspirational or religious works. The charge alleged that the legislator had violated the State Ethics Code, contained in chapter 84, Hawaii Revised Statutes ("HRS"), by using state resources to support an LFM.

The charge concerned a particular LFM that was hosted by the legislator. The legislator chose the subject of the meeting. At the meeting, a passage from the Bible was discussed. In order to inform his fellow legislators about the meeting, the legislator instructed his legislative staff to use the office computer to draft a fax message with information about the date, time, and content of the LFM. The message included a request that the recipients RSVP to the legislator's office telephone number. The legislator instructed his staff to use the office fax machine to transmit the message to various legislators.

In his charge, the complainant maintained that, by using state resources in support of the LFM, the legislator had violated HRS section 84-13(3). This section reads, in pertinent part, as follows:

§ 84-13 Fair treatment. No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

. . . .

- 3) Using state time, equipment, or other facilities for private business purposes.

. . . .

In his private capacity, the legislator was employed by a local church. The complainant maintained in his charge that, because the legislator was employed by a church, his actions amounted to a use of state resources for private business purposes.

Pursuant to HRS section 84-31(b), a copy of the charge was sent to the legislator for his response. The legislator filed an answer with the Commission. In his answer, the legislator denied that he had violated the State Ethics Code.

State Ethics Commission staff interviewed the legislator and his office manager. In addition to this interview, Commission staff spoke with the legislator's legislative aide. Through these interviews, the Commission obtained information about the LFM's, about the legislator's role in setting up the LFM that he hosted, and about the legislator's position with his church. The legislator also appeared before the Commission at its April 4, 2001, adjudicatory meeting to discuss this matter.

According to the information that the Commission received, LFM's had been held at the Legislature a number of years prior to the legislator's election to the Legislature. It was not clear exactly how many years LFM's had been held at the Legislature. The legislator's aide believed that they had been held since at least 1996.

These meetings were described as essentially Christian fellowship meetings. A legislator hosts each LFM. The host apparently sets the agenda, which typically revolves around a discussion of a passage from an inspirational text, often the Bible. The text's relevance to the legislators' roles and to government in general is discussed. In addition, prayers may be offered. LFM's are open to legislators only, and legislators from any political party may attend. Although they are predominantly Christian gatherings, it appeared that members of other religions were welcome to attend as well. Anywhere from five to twenty-five legislators attend the LFM's. They are held every Tuesday or Wednesday, depending on the Legislature's schedule of legislative business.

The legislator explained that he was notified of these meetings after he was elected to office. He said that two other legislators appeared to be the legislators who generally arranged the meetings. At the first meeting held during the current legislative session, the legislators who attended were assigned subsequent dates on which to host an LFM. The legislator was assigned a date. He decided that he would discuss a passage from the Bible. He said that the point of this discussion was that good government depended on the integrity of lawmakers.

A secretary in the legislator's legislative office used the office computer and fax machine to transmit a notice of the meeting and its subject to the legislators who attend the LFM's. The notice appeared on a paper that carried the heading "Memo." In the top corner of the paper was the legislator's name and title. The office telephone may also have been used to receive RSVP's. Although it was not mentioned in the charge, the legislator also explained to the Commission's staff, when asked, that he used his legislative allowance to pay for the lunch of the attendees of the meeting he hosted. He stated that legislators had used their legislative allowance to provide lunch for the LFM's, and that he believed this was authorized because legislators were entitled to have their expenses covered when they met in their legislative capacities. With regard in general to the LFM's, he said that he believed that he was following the example of other legislators. Other legislators had used legislative staff and equipment to set up these meetings.

The legislator also confirmed that he was an employee of a local church. He stated that he received a housing allowance and a salary for his work with the church. He also stated that he was not the only legislator attending LFM's who was affiliated with a church.

The complainant believed that the legislator's actions in setting up the LFM amounted to a misuse of position to benefit the legislator's church. More specifically, the complainant claimed that the legislator violated HRS section 84-13(3) by using state resources to benefit his church, a private business, as that term is defined in the State Ethics Code.

The Commission noted that there was no question that the legislator's church was a private business for purposes of the State Ethics Code. HRS section 84-3 defines the term "business" as including non-profit organizations. Thus, HRS section 84-13(3) would bar the

legislator from using any state resources for the purposes of the church. For example, the legislator could not use legislative resources to solicit money for a donation to the church. Similarly, the legislator could not use the resources of his office to recruit new members to his church. If the legislator used legislative resources to proselytize and draw new members to his church, then his actions could have raised a question of whether or not he was using state resources to accord unwarranted advantages to his church in violation of HRS section 84-13(3).

In this case, however, it appeared to the Commission that the legislator's actions at the LFM were confined to a general discussion of a passage from the Bible. He did not advocate for his church or solicit support or members for his church. Although he may have made statements during the LFM he hosted that were in accordance with the beliefs of his church, this alone would not amount to a violation of the Fair Treatment law, because there was no evidence that the legislator was actively seeking support or members for his church.

The question in this case centered on whether or not the legislator could use state resources to facilitate an LFM at which he discussed a passage from the Bible. The Commission believed that, without evidence of a violation of HRS section 84-13, this was a question that must be addressed by interpreting the Establishment Clause of the Constitution, or other applicable law, and not the State Ethics Code.¹ Whether or not the legislator's actions were in violation of the Establishment Clause, or of any other law, was a question, the Commission believed, for the Attorney General's office.

It was the Commission's understanding that the legislator had requested an opinion from the Attorney General's office as to whether his actions violated Constitutional law or any other law. The Commission believed that the Attorney General's office was the proper agency to address this matter. The Commission believed that the Fair Treatment section of the State Ethics Code did not prohibit the conduct that was described to the Commission in this case, although other law might be applicable. The Commission believed, however, that it was prudent on the legislator's part to seek an opinion from the Attorney General to address LFM's in general. The Commission believed that the Attorney General should also address as well the use of one's legislative allowance to pay for the meal expenses of LFM attendees.

The Commission appreciated the legislator's cooperation in this matter.

¹ The Establishment Clause of the First Amendment states, " Congress shall make no law respecting an establishment of religion." The Establishment Clause is the cornerstone of the doctrine of the separation of church and state.

Dated: Honolulu, Hawaii, April 27, 2001.

HAWAII STATE ETHICS COMMISSION

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